EDITOR'S NOTE

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In The

Supreme Court of the United States

October Term, 1985

No. 85-5116

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RICHARD P. LUCAS,

Petitioner,

-against-

THE PEOPLE OF THE STATE OF NEW YORK,

Respondents.

FURTHER SUPPLEMENTAL BRIEF OF PETITIONER IN SUPPORT OF HIS PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, THIRD JUDICIAL DEPARTMENT.

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THE SEARCH OF PETITIONER'S VEHICLE IS DISTINGUISHABLE FROM THE SEARCH OF THE VEHICLE IN CARNEY V. CALIFORNIA, ___ U.S. ___ 105 S. Ct. 2066.

Due to his limited knowledge of the law and the fact that he is proceeding pro se herein, it has just now come to petitioner's attention that this Court has recently decided the case of Carney v. California, ___U.S.___, 105 S. Ct. 2066, and that it behooves him to point out certain factors that distinguish the search of his vehicle from the search of the vehicle in Carney.

First, unlike the vehicle in Carney, supra, petitioner's vehicle was found stationary in a place regularly used for residential purposes. Petitioner's vehicle was stored in a internal garage located within the building proper of the hotel. Vehicles parked within the garage were not exposed to public view or scrutiny, nor were they subject to normal government regulation and inspection.

Secondly, unlike the vehicle in Carney, supra, petitioner's vehicle was not readily mobile, as it was under intense and constant surveillance by a phalanx of New York State Police Investigators, whose express purpose in being there was to intercept anyone who might approach and attempt to move the vehicle.

Also, since petitioner and the co-defendant were in custody 1000 miles away from the vehicle, and their two female companions were in constructive custody also 1000 miles away on the date of the second search of the vehicle, October 20, 1975, it is obvious that there was no danger that they would be returning to move the vehicle beyond the reach of the police.

Proof that the police were not concerned about the possibility of the vehicle being removed beyond their grasp, is the leisurely pace they set for themselves by not making the second search of the vehicle until the day after they gained what they claim was the additional probable cause (the co-defendant's confession) to make said search. Nothing whatsoever prevented the police from obtaining a second search warrant during that more than 24 hour period; nothing, that is, other than their obvious belief that they could violate the law with impunity.

In sum, petitioner's vehicle was not readily mobile, and was not in a setting that objectively indicated that the vehicle was being used for transportation. The police knew the vehicle wasn't going anywhere, and there were no other exigent circumstances that required an immediate, warrantless search.

Therefore, this Court should distinguish the search of petitioner's vehicle from the search of the vehicle in Carney, supra, and should hold the search of petitioner's vehicle on October 20, 1975, to be an unconstitutional, warrantless search.

CONCLUSION

For the reasons stated herein, and in the Reply and Supplemental Brief and Petition previously submitted, it is respectfully urged that the petition for a writ of certiorari should be granted.

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